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Attorneys for Plaintiff: PATRICIA FILARDI

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATRICIA FILARDI, an individual,
Plaintiff,

v.

YUMMY DONUTS AND SUBS, a
business of unknown form; PAUL D.
SOTO and TANNIS D. SOTO, as
individuals and trustees of the P.
AND T. SOTO REVOCABLE
TRUST DATED MARCH 14, 2012;
and DOES 1-10, inclusive,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For:**

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Plaintiff, PATRICIA FILARDI ("Plaintiff"), complains of Defendants
YUMMY DONUTS AND SUBS, a business of unknown form; PAUL D. SOTO
and TANNIS D. SOTO, as individuals and trustees of the P. AND T. SOTO

1 REVOCABLE TRUST DATED MARCH 14, 2012; and DOES 1-10 (“Defendants”)
2 and alleges as follows:

3 **PARTIES:**

4 1. Plaintiff PATRICIA FILARDI is an adult quadriplegic who uses a
5 wheelchair for mobility. She has a specially equipped van with a ramp that deploys
6 out of the passenger side of her van. Plaintiff is substantially limited in performing
7 one or more major life activities, including but not limited to: walking, standing,
8 sleeping, ambulating, and/or sitting. Plaintiff requires the use of a wheelchair at all
9 times for mobility and life functions. At the time of Plaintiff’s visits to Defendant’s
10 facility and prior to instituting this action, Plaintiff suffered from a “qualified
11 disability” under the ADA. She has a Disabled Person Parking Placard issued to her
12 on a permanent basis.

13 2. Plaintiff brings this action acting as a “private attorney general” as
14 permitted under the American with Disabilities Act of 1990 (“ADA”) to privatize
15 enforcement of the ADA without the American tax payer(s) bearing the financial tax
16 burden for such action.

17 3. Defendant PAUL D. SOTO and TANNIS D. SOTO, as individuals and
18 trustees of the P. AND T. SOTO REVOCABLE TRUST DATED MARCH 14,
19 2012, owned the property located at 1154 Brookside Avenue, Redland, CA 92373
20 (“Property”) on April 3, 2018.

21 4. Defendant PAUL D. SOTO and TANNIS D. SOTO, as individuals and
22 trustees of the P. AND T. SOTO REVOCABLE TRUST DATED MARCH 14,
23 2012, owns the Property currently.

24 5. Defendant YUMMY DONUTS AND SUBS, a business of unknown
25 form, owned, operated and controlled the business of DAIRY QUEEN –
26 BERMUDA DUNES, (“Business”) on April 3, 2018.

27 6. Defendant Owner YUMMY DONUTS AND SUBS, a business of
28 unknown form, owns, operates and controls the Business currently.

1 7. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the Property and Business, or their relative
3 responsibilities in causing the access violations herein complained of, and alleges a
4 joint venture and common enterprise by all such Defendants. Plaintiff is informed
5 and believes that each of the Defendants herein, including Does 1 through 10,
6 inclusive, is responsible in some capacity for the events herein alleged, or is a
7 necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend
8 when the true names, capacities, connections, and responsibilities of the Defendants
9 and Does 1 through 10, inclusive, are ascertained.

10 **JURISDICTION AND VENUE**

11 8. This Court has subject matter jurisdiction over this action pursuant
12 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
13 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

14 9. This court has supplemental jurisdiction over Plaintiff's non-federal
15 claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so
16 related to Plaintiff's federal ADA claims in that they have the same nucleus of
17 operative facts and arising out of the same transactions, they form part of the same
18 case or controversy under Article III of the United States Constitution.

19 10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the
20 Property which is the subject of this action is located in this district and because
21 Plaintiff's causes of action arose in this district.

22 **FACTUAL ALLEGATIONS**

23 11. Plaintiff went to the Business on or about April 3, 2018, to buy some
24 donuts.

25 12. The Business, including the Property, is a facility open to the public, a
26 place of public accommodation, and a business establishment.

27 13. Parking spaces are some of the facilities, privileges and advantages
28 reserved by Defendants to persons patronizing the Business and Property.

1 14. Unfortunately, although parking spaces were some of the facilities
2 reserved for patrons, there were barriers for persons with disabilities that cause the
3 named facilities to fail as to compliance with the Americans with Disability Act
4 Accessibility Guidelines (“ADAAG”) on or around April 3, 2018, or at any time
5 thereafter up to and including, the date of the filing of this complaint.

6 15. Instead of having architectural barrier free facilities for patrons with
7 disabilities, Plaintiff experienced the following at the Business and Property: a built
8 up curb ramp that projects from the sidewalk and into the disabled parking area
9 (Section 406.5). Furthermore, the curb ramp is in excess of the maximum grade
10 allowed by ADAAG specifications (Section 406.1); there is no ADASAD compliant
11 disabled van accessible parking signage in violation of Section 502.6; and, the curb
12 ramp at the accessible parking space serving the stores main entrance projects into
13 the access aisle in violation of Section 406.5 which requires that curb ramps and the
14 flared sides of curb ramps shall be located so that they do not project into vehicular
15 traffic lanes, parking spaces, or parking access aisles.

16 16. Subject to the reservation of rights to assert further violations of law
17 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
18 violations which affects her personally.

19 17. Plaintiff is informed and believes and thereon alleges that, currently,
20 there are no compliant, accessible Business facilities designed, reserved and
21 available to persons with disabilities at the Business in addition to that alleged *supra*.

22 18. Plaintiff is informed and believes and thereon alleges that Defendants
23 had no policy or plan in place to make sure that the parking spaces were compliant
24 for persons with disabilities and remained compliant prior to April 3, 2018.

25 19. Plaintiff is informed and believes and thereon alleges Defendants have
26 no policy or plan in place to make sure that the complaints of violations alleged
27 above are available to persons with disabilities and remain compliant currently.

28 20. Plaintiff personally encountered the above alleged barriers when

1 attempting to access the Business and Property. These inaccessible conditions
2 denied the Plaintiff full and equal access and caused her difficulty, humiliation,
3 frustration and upset.

4 21. As an individual with a mobility disability is dependent upon a
5 wheelchair, Plaintiff has a keen interest in whether public accommodations have
6 architectural barriers that impede full accessibility to those accommodations by
7 individuals with mobility impairments.

8 22. Plaintiff is being deterred from patronizing the Business and its
9 accommodations on particular occasions, but intends to return to the Business for the
10 dual purpose of availing herself of the goods and services offered to the public and
11 to ensure that the Business ceases evading its responsibilities under federal and state
12 law.

13 23. As a result of her difficulty, humiliation, and frustration because of the
14 inaccessible condition of the facilities of the Business, Plaintiff did not fully access
15 the Business or Property. However, Plaintiff would like to return with her disabled
16 fiancé to the location given its close proximity to an area she frequents from time to
17 time.

18 24. The Defendants have failed to maintain in working and useable
19 conditions those features required to provide ready access to persons with
20 disabilities.

21 25. The violations identified above are easily removed without much
22 difficulty or expense. They are the types of barriers identified by the Department of
23 Justice as presumably readily achievable to remove and, in fact, these barriers are
24 readily achievable to remove. Moreover, there are numerous alternative
25 accommodations that could be made to provide a greater level of access if complete
26 removal were not achievable.

27 26. Plaintiff and her disabled fiancé are being deterred from patronizing the
28 Business and its accommodations on particular occasions, but intend to return to the

1 Business for the dual purpose of availing themselves of the goods and services
 2 offered to the public and to ensure that the Business ceases evading their
 3 responsibilities under federal and state law.

4 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
 5 alleges, on information and belief, that there are other violations and barriers in the
 6 site that relate to her disabilities. Plaintiff will amend the complaint, to provide
 7 proper notice regarding the scope of this lawsuit, once she conducts a site inspection.
 8 However, please be on notice that Plaintiff seeks to have all barriers related to their
 9 disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding
 10 that once a plaintiff encounters one barrier at a site, she can sue to have all barriers
 11 that relate to her disability removed regardless of whether she personally
 12 encountered them).

13 28. Given the obvious and blatant violation alleged hereinabove, Plaintiff
 14 alleges, on information and belief, that the failure to remove these barriers was
 15 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
 16 defendants exercised control and dominion over the conditions at this location, and
 17 therefore, (3) the lack of accessible facilities was not an accident because had the
 18 defendants intended any other configuration, they had the means and ability to make
 19 the change.

20 29. Without injunctive relief, plaintiff will continue to be unable to fully
 21 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

24 **42 U.S.C. § 12181 et seq.**

25 30. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 26 above and each and every other paragraph in this Complaint necessary or helpful to
 27 state this cause of action as though fully set forth herein.

28 31. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods, and services of any place
2 of public accommodation are offered on a full and equal basis by anyone who owns,
3 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

4 Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
6 or procedures, when such modifications are necessary to afford
7 goods, services, facilities, privileges, advantages, or
8 accommodations to individuals with disabilities, unless the
9 accommodation would work a fundamental alteration of those
10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
14 Appendix "D".
- 15 c. A failure to make alterations in such a manner that, to the
16 maximum extent feasible, the altered portions of the facility are
17 readily accessible to and usable by individuals with disabilities,
18 including individuals who use wheelchairs, or to ensure that, to
19 the maximum extent feasible, the path of travel to the altered area
20 and the bathrooms, telephones, and drinking fountains serving
21 the area, are readily accessible to and usable by individuals with
22 disabilities. 42 U.S.C. § 12183(a)(2).

23 32. Any business that provides parking spaces must provide accessible
24 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991
25 Standards, parking spaces and access aisles must be level with surface slopes not
26 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010
27 Standards, access aisles shall be at the same level as the parking spaces they serve.
28 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are

1 required to be nearly level in all directions to provide a surface for wheelchair
2 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built
3 up curb ramps are not permitted to project into access aisles and parking spaces. Id.
4 No more than a 1:48 slope is permitted. Standards § 502.4.

5 33. Here, the failure to ensure that accessible facilities were available and
6 ready to be used by Plaintiff is a violation of law.

7 34. A public accommodation must maintain in operable working condition
8 those features of its facilities and equipment that are required to be readily accessible
9 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

10 35. Given its location and options, Plaintiff will continue to desire to
11 patronize the Business but she has been and will continue to be discriminated against
12 due to lack of accessible facilities and, therefore, seek injunctive relief to remove the
13 barriers.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL**

16 **CODE § 51 *et seq.***

17 36. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
18 above and each and every other paragraph in this Complaint necessary or helpful to
19 state this cause of action as though fully set forth herein.

20 37. California Civil Code § 51 *et seq.* guarantees equal access for people
21 with disabilities to the accommodations, advantages, facilities, privileges, and
22 services of all business establishments of any kind whatsoever. Defendants are
23 systematically violating the UCRA, Civil Code § 51 *et seq.*

24 38. Because Defendants violate Plaintiff's rights under the ADA, they also
25 violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f),
26 52(a).) These violations are ongoing.

27 39. Defendants' actions constitute intentional discrimination against
28 Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil

1 Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants
2 have been previously put on actual notice that its premises are inaccessible to
3 Plaintiff as above alleged. Despite this knowledge, Defendants maintain the
4 Property and Business in an inaccessible form.

5 **PRAYER**

6 **WHEREFORE, Plaintiff prays that this court award damages provide relief as**
7 **follows:**

8 1. A preliminary and permanent injunction enjoining Defendants from
9 further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code §
10 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note:**
11 **Plaintiff is not invoking section 55 of the California Civil Code and is not**
12 **seeking injunctive relief under the Disable Persons Act at all.**

13 2. An award of actual damages and statutory damages of not less than
14 \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for
15 each time she visits an establishment that contains architectural barriers that deny the
16 Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.*
17 (2005) 431 F.Supp.2d 1088, 1091.)

18 3. An additional award of \$4,000.00 as deterrence damages for each
19 violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist.
20 LEXIS 150740 (USDC Cal, E.D. 2016);

21 4. For reasonable attorneys' fees, litigation expenses, and costs of suit,
22 pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a trial by jury on all appropriate issues raised in this Complaint.

Dated: August 28, 2018

MANNING LAW, APC

By: /s/ Joseph R. Manning Jr., Esq.
Joseph R. Manning Jr., Esq.
Michael J. Manning, Esq.
Craig G. Côté, Esq.
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